plaintiff a just relief which is not obtainable with more fairness to the defendant. Only in attachment and garnishment is such relief afforded; the plaintiff could be fully protected by permitting attachment or garnishment merely to maintain the *status quo*, pending suit in a state more properly having jurisdiction over the defendant.[13] A distinction between the new class of jurisdiction, and all others except that based on garnishment of the absentee's creditors, is that only garnishment and the proposed type present the possibility of injustice, in rare cases, to the debtor; but this is a rather minute consideration.

The proposed type of jurisdiction is helped not only by the fact that many other types are no more justifiable, but also by its close analogy to jurisdiction based on garnishment. Each of these two types includes a suit against a debtor within the state, and a suit against an absentee; the difference is merely that the proposed type seeks to disestablish the absentee's right to the principal debt, and garnishment to establish the absentee's indebtedness to the plaintiff.

EQUITABLE DECREE AS CAUSE OF ACTION IN ANOTHER STATE. — The law of the *situs* governs the creation of legal and equitable interests in land. If that law creates a valid trust, the courts of another jurisdiction will recognize it, even though by the law of the forum a trust would not be created.[1] Conversely, if the law of the *situs* does not predicate a trust upon certain acts, a foreign jurisdiction will not impose a trust, although its law would create one from those acts.[2] In this country, these principles apply even to marriage settlements.[3]

Equity does, however, exercise some power over foreign land. Acting *in personam*, it may decree specific performance of a contract to convey,[4] or require deeds to rectify a boundary.[5] Even though the law of the *situs* would not recognize a right to a conveyance, equity may decree a conveyance as a remedy for a tort,[6] or breach of contract.[7]

A recent case raises the interesting question of the effect of such a decree in the jurisdiction where the land is. *De Graffenried* v. *De Graffenried*, 132 N. Y. Supp. 1107 (App. Div.). A Swiss court granted a divorce to a wife. Swiss law, on a decree of divorce against the husband, requires him to reconvey property which the wife has transferred to him during the marriage. The wife in New York sought a reconveyance

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[13] This is the procedure employed in France and Belgium. Todesco *v.* Dumont, 18 Journal du Droit International Privé, 559. See BAR, INTERNATIONAL LAW (Gillespie's translation), 536–537.

[1] *In re* Fitzgerald, [1904] 1 Ch. 573; Knox *v.* Jones, 47 N. Y. 389.

[2] Acker *v.* Priest, 92 Ia. 610, 61 N. W. 235. See 20 HARV. L. REV. 382.

[3] Saul *v.* His Creditors, 5 Mart. N. S. (La.) 569. In England, it is held that the law of the place of the contract governs the future acquisitions of property. De Nichols *v.* Curlier, [1898] 1 Ch. 403. See 12 HARV. L. REV. 138.

[4] Sutphen *v.* Fowler, 9 Paige (N. Y.) 280; Newton *v.* Bronson, 13 N. Y. 587.

[5] Penn *v.* Lord Baltimore, 1 Ves. 443.

[6] Lord Cranstown *v.* Johnston, 3 Ves. Jr. 170.

[7] *Ex parte* Pollard, Mont. & C. 239.

of such property, situated in New York. The court dismissed the bill. Obviously her contention that the Swiss law created in her deed an implied condition to reconvey, in the event of divorce, was groundless, since the law of the *situs* recognized no such interest. Admitting that the decree imposed a duty to reconvey, it could not act directly upon the title.[8] It is clear law that an action to quiet title brought at the *situs* would not lie.[9] The enforcement of such a foreign decree is a matter of policy; in the nature of things there would be no difficulty in enforcement if authorized by statute. But by the common law, an equitable decree for the doing of an act, except for the payment of money, is not enforceable in another court.[10] Thus a decree to execute a mortgage in a foreign jurisdiction will not be enforced at the *situs* of the land.[11] The rule that jurisdiction respecting foreign land is only *in personam*, is bereft of all practical force if the decree must be enforced by the court of the *situs*. Such a doctrine would really accord jurisdiction over its lands to a foreign court. The most serious objection is that there is no form of procedure for enforcing the personal decree of a court of equity except by order of the court rendering it. The decree is in its nature not the establishment of an obligation, but a method of enforcing an obligation — a mere form of execution.[12] Similarly, where foreign laws impose the duty of providing for a destitute son-in-law, that obligation is not enforceable in another country.[13] Where Mexican law imposed a personal obligation on a railroad to support the widow of a man killed on its road, so long as she was needy, that obligation could not be enforced in this country, because there is no common-law procedure applicable.[14]

A distinction has been suggested between the enforcement of foreign decrees effectuating rights existing apart from the decree, and those in which no antecedent obligation exists.[15] It is submitted that such a distinction is without merit, and the cases relied on to support it show only that when the equitable foreign decree is put in evidence as a defense, it is conclusive.[16] In such cases, there being no procedural difficulties, the foreign decree should always be allowed where equitable defenses are permitted at law.

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[8] Farmers Loan & Trust Co. *v.* Postal Tel. Co., 55 Conn. 334, 11 Atl. 184; Price *v.* Johnston, 1 Oh. St. 390.

[9] Fall *v.* Fall, 75 Neb. 104, 113 N. W. 175; Fall *v.* Eastin, 215 U. S. 1, 30 Sup. Ct. 3.

[10] See 3 BEALE, CASES ON THE CONFLICT OF LAWS, 537. Judgments and equitable decrees, however, for the payment of money, are enforceable in a foreign jurisdiction, in an action of debt. Henley *v.* Soper, 8 B. & C. 16; Thrall *v.* Waller, 13 Vt. 231. So upon the granting of a divorce, a decree for the payment of money as alimony is enforceable in another jurisdiction. Wagner *v.* Wagner, 26 R. I. 27, 57 Atl. 1058. But execution will not issue on the judgment of another state without suit on the judgment. Lamberton *v.* Grant, 94 Me. 508, 48 Atl. 127.

[11] Bullock *v.* Bullock, 51 N. J. Eq. 444, 27 Atl. 435; S. C. 52 N. J. Eq. 561, 30 Atl. 676.

[12] Bullock *v.* Bullock, 52 N. J. Eq. 561, 30 Atl. 676.

[13] De Brimont *v.* Penniman, 10 Blatch. (U. S.) 436.

[14] Slater *v.* Mexican National R. Co., 194 U. S. 120, 24 Sup. Ct. 581.

[15] See 21 HARV. L. REV. 210.

[16] In Burnley *v.* Stevenson, 24 Oh. St. 474, the plaintiff sued in Ohio to recover possession of Ohio land. The defendant was allowed to plead a decree of a Kentucky court for the specific performance of a contract to convey that land, and the decree was considered conclusive. See also Dunlap *v.* Byers, 110 Mich. 109, 67 N. W. 1067.